

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Post-Incentive Auction Transition)	MB Docket No. 16-306
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	

COMMENTS OF SINCLAIR BROADCAST GROUP

Sinclair Broadcast Group, Inc. (“Sinclair”) hereby submits these comments in response to the Media Bureau’s September 30, 2016, Public Notice (“PN”)¹ regarding the post-Incentive Auction transition scheduling plan. Sinclair recognizes the effort that the Incentive Auction Task Force, Media Bureau and related offices have invested in producing the phased repacking plan proposed last month. However, the plan continues to suffer by failing to recognize numerous practical realities well documented in the record, and most recently summarized by the National Association of Broadcasters (“NAB”) in its comments to the PN.² Sinclair shares NAB’s concerns, but focuses on two specific matters in these comments.

First, the repacking plan expressly relies on cooperation among broadcasters, but creates an enormous disincentive for any broadcaster to make significant concessions for the greater good. In fact, it creates the opposite incentive by threatening a “death penalty” for stations that

¹ *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 16-1095 (Sept. 30, 2016) (Public Notice).

² Comments of National Association of Broadcasters, MB Docket No. 16-306, GN Docket No. 12-268 (October 28, 2016).

do not meet their transition deadlines. This all but guarantees an “every man for himself” mentality among broadcasters when procuring repacking equipment and services. Second, apparently to perpetuate the fiction that all stations can be repacked within 39 months according to the repacking plan, the PN does not provide a mechanism to address the impact of inevitable failures to meet the prescribed timelines.

The Commission should revise the plan to eliminate the extreme disincentive for stations to cooperate with each other. It should also acknowledge that failures will occur and provide a mechanism for adjustments to the schedule for all impacted stations.

Even under the best case scenario, the post-auction repack will bring significant disruption to broadcast operations and the viewing public. For this reason, Sinclair wants nothing more than for the repacking process to be completed as quickly and smoothly as possible. But the repacking plan detailed in the PN is destined to significantly slow down repacking by pitting broadcaster against broadcaster in a contest for repacking equipment and services that elevates each broadcaster’s self-interest over the larger goal of the fastest and smoothest possible repacking process.

The FCC has conceded that the Commission has no authority to force stations or suppliers to cooperate.³ Yet the plan relies exclusively on the cooperation of a vast number of industry service and equipment providers, as well as voluntary coordination among broadcasters themselves. The repacking plan assumes broadcasters will cooperate at every stage of planning, from sequencing orders for equipment and services to correspond to the plan’s phases, to performance and interference testing, to final cutover.

³ The PN and the October 17, 2016, repacking plan webinar (Transition Scheduling Plan Webinar (Oct. 17, 2016)) repeatedly acknowledge that many factors in the repacking plan are beyond the control of the industry, the Commission, and individual licensees.

Because the Commission cannot mandate cooperation, it can and should create incentives for all parties to cooperate. This should be a fairly straightforward task. All broadcasters have a natural incentive to cooperate: the longer the transition, the more unreimbursed costs each station will face and the greater the disruption to viewers, broadcasters and MVPDs. But rather than building on this natural incentive, the Commission's repacking plan creates a paramount "every man for himself" incentive. The Commission has placed each repacked station under threat of going dark if it misses its phase completion date. Paragraph four of the PN states, "[t]he phase completion date will be the date listed in each station's construction permit as its construction deadline and will be the last day that a station may operate on its pre-auction channel."⁴ In this environment, each station will cooperate only so far as doing so does not put its own ability to meet its completion date at risk.

Inevitably, many, if not most, stations will encounter delays caused by factors like weather, local zoning processes, FAA approvals, and delivery and installation of equipment. Each delay for each station is likely to have a compound effect on "downstream" stations. Delays in one daisy chain can also spill over to impact others. Stations, suppliers and the FCC will have to cooperate to mitigate the impact of these problems and keep the transition on track. But with so many factors beyond each station's control and the prospect of going dark as a penalty for cooperation, stations will be far less likely to make concessions to help other stations.

This repacking "death penalty" is the surest way to minimize broadcaster cooperation, slow down the transition, and maximize viewer disruption. Under threat of being forced off the air, it is rational for each broadcaster to further its self-interest in obtaining equipment and

⁴ The PN merely re-states the rule the FCC previously adopted: a station "must cease operating on [its] pre-auction channel once [that] station begins operating on its post-auction channel or by the deadline specified in its construction permit for its post-auction channel, whichever occurs earlier." 47 C.F.R § 73.3700(b)(4)(iii); *see also* *IA R&O*, 29 FCC Rcd at 6797, para. 564.

services as quickly as possible, regardless of its impact on other stations' ability to meet their phase completion dates. This approach coerces stations into the very behavior the FCC should be discouraging, i.e., putting a station's self-interest ahead of respecting the order of the phased approach. The draconian nature of the penalty for missing a station's phase completion date creates no incentive for any station to make even small concessions for the greater good.

Beyond the counterproductive impact of the transition death penalty, it is plainly inequitable for the Commission to force stations off the air if they have followed the rules but have been unable to transition because of factors beyond their control. The FCC cannot punish broadcasters for following a plan the FCC dictates, which plan the FCC concedes relies on factors beyond anyone's control and which, quite obviously, undermines incentives for stations to make cooperative concessions. The record is replete with studies and reports that lay out quite methodically why a 39-month transition of most television stations in the country is unrealistic.

Moreover, the FCC – all five Commissioners – told relevant Members of the House of Representatives in 2015 that no station will be forced off the air as a result of this repack.⁵ Reaffirming that on the record in this docket will improve the likelihood that broadcasters will cooperate in support of the phased approach by removing the fear of being taken off the air.

The PN provides a good, high-level plan for breaking the repacking process into separate daisy chains and phases. But it leaves too much to chance by failing to anticipate and plan for failures and delays that all stakeholders acknowledge will be inevitable. Worst of all, it forces every licensee into an “every man for himself” mindset that is certain to slow progress even while increasing both costs and disruption. The Commission should clearly state that it will not

⁵ See Hearing on Oversight of the FCC, U.S. House of Representatives, Subcommittee on Communications and technology, Committee on Energy and Commerce at 133-34 (Nov. 17, 2015) *available at* <http://docs.house.gov/meetings/IF/IF16/20151117/104195/HHRG-114-IF16-Transcript-20151117.pdf>.

force stations off the air *en masse* for delays beyond their control or if they have made concessions in their own progress to facilitate the greater good.

Respectfully submitted,

/s/
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